

SWITZERLAND ADAPTING TO (EX)CHANGE

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Switzerland

Adapting to (ex)change

- Exchange of information
- Offshore leaks
- Prosecution of Swiss bank(er)s
- RUBIK
- Troubles with the neighbors
- 2013 tax treaty update
- EC-Swiss cantonal tax dispute 2005-2013
- Domestic tax developments

The history of exchange

- 1996 US-CH DTT: information exchange in case of «**tax fraud and the like**»
- 2004 EC-Swiss **Savings Tax** Agreement: withholding tax and information exchange for purposes of the Agreement
- 2006 **New treaty policy** Swiss-Austrian DTC providing for exchange (i) for purposes of the Treaty, (ii) in case of tax fraud and (iv) for holdings
In addition assistance with collection of taxes (e.g. border workers)
- 2009-2 **UBS settlement** with exchange of client names
- 2009-3 Political landslide : OECD model based exchange **upon request**
- 2011-2 Conditions for information request relaxed
- 2013-4 **Automatic exchange** of information no longer excluded, provided (i) it becomes the new OECD standard, (ii) a true level playing field is created, (iii) beneficial ownership is properly identified and (iv) the exchange is reciprocal

And the future of exchange?

- CH: taxpayer no longer always informed about a request
- CH: bearer shares either abolished or only allowed if beneficial owner can be identified
- Identification of UBO in case of Trusts, Foundations, etc.
- Automatic exchange under EC Savings Directive *bis*
- Automatic exchange new OECD Standard
- More purchases of stolen data
- Offshore leaks and the influence of media and NGO's
- Focus may quickly shift to corporate taxpayers / transfer pricing disputes (Google, Starbucks, Amazon, etc.)

Offshore leaks

- BVI, Panama, New Zealand, Singapore ... and not Switzerland ?
- Swiss banks and lawyers mentioned as promoters
- Taxes evaded by Swiss taxpayers - bank secrecy now also under pressure for Swiss residents
- Savings Directive *bis* will receive a boost, OECD transparency initiatives as well, automatic exchange seems the response
- Singapore on the radar, MAS will respond, level playing field
- Offshore becomes equal to fraud, fast justice by the media
- Onshore with attractive tax rates and with substance obvious alternative: Ireland, the Benelux countries and Switzerland may benefit

From offshore to onshore

Bloomberg

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Billionaires Flee Havens as Trillions Pursued Offshore

By David de Jong and Robert LaFranco - Apr 29, 2013

Bloomberg Opinion

<http://www.bloomberg.com/news/2013-04-29/billionaires-flee-havens-as-trillions-pursued-offshore.html>

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Prosecution of Swiss bank(er)s

- At least 11 Swiss banks subject to **criminal investigation** for alleged assistance to US taxpayers evading taxes
- UBS settled, Wegelin has been liquidated, Zurich Cantonal Bank was indicted, Bank Frey was attacked recently (April 17)
- Coutts (former UBS) banker **arrested** in NYC (April 19?)
- **Time is pressing** for a general settlement, prosecution is continuing but focus switched to individuals, for the moment
- Talks about a **general settlement** for all 300 Swiss banks divided into three categories (depending on the degree of assistance with tax evasion)

Is FATCA the answer ?

- US-Swiss intergovernmental agreement (IGA) signed on February 14, 2013
- Model II IGA (non-reciprocal, CH refusal of automatic exchange)
- Submitted to Parliament on April 10, 2013
- Entry into force foreseen by January 1, 2014
- Solution for the future, but not for the past

Rubik, the magic is gone

- Rubik WHT agreements in force with the UK and Austria
- Negotiations with Greece, Italy, Spain and other EU member states (Belgium ?)
- Rubik refused by German Parliament
- New discussions with Germany (May 2013)
- Rubik likely to become obsolete when automatic exchange of information enters into force and when Savings Directive *bis* becomes applicable
- Still important to regulate the past, looking at LDF Model as an alternative, amnesty needed

Troubles with the neighbors

France

Swiss lump-sum taxpayers no longer considered resident under FR-CH DTT

New FR-CH succession treaty seeks to tax heirs in even if estate is Swiss

Border workers subject to French social medicare

Swiss banks under criminal investigation

Italy

Switzerland remains on grey list (corporate tax)

Germany

No RUBIK, purchases of stolen data continue

Swiss banks under criminal investigation

Austria

Playing hard ball in cantonal tax dispute

2013 Swiss treaty update

Treaty news : over 30 treaties with exchange (90 treaties in total)

- In force + exchange : Austria, Canada, Chinese Taipei (Taiwan), Denmark & Faroe Islands, Finland, France, Germany, Greece, Hong Kong, India, Japan, Luxembourg, Malta, Mexico, the Netherlands, Norway, Poland, Qatar, Romania, Russian Federation, Singapore, Slovak Republic, South Korea, Spain(MFN), Sweden, Turkey, the UAE, the UK and Uruguay
- In force soon + exchange (accepted by CH parliament) : Kazakhstan and the US
- Signed with : Bulgaria, Czech Republic, Ireland, Peru, Portugal, Slovenia and Turkmenistan
- Initialed with a/o : Costa Rica, North Korea, Oman and Zimbabwe
- Negotiations with a/o : Brazil. Italy, Libya, Saudi Arabia and Senegal

New treaty policies

New treaty policies :

- Exemption from WHT on dividends paid to **qualifying pension schemes**
(e.g. new treaties with Hong Kong, the Netherlands, Qatar, UAE, UK and USA)
- Exemption from WHT on dividends paid to **sovereign funds** (Qatar and UAE)

EC-Swiss cantonal tax dispute

- EC-CH tax dispute on **cantonal corporate taxation** since 2005
- EU claims that the Swiss cantonal tax privileges constitute **forbidden state aid** (based on FTA 1972)
- Since 2010 “dialogue” also addresses **Code of Conduct** (ECOFIN 1997)
- Concrete proposals must be made **by June 30, 2013**
- Cantonal tax regimes becoming Eurocompatible (NE, NW)
- General rates possibly lowered (10 to 15% range, GE 13%)
- Parliament proposes (i) a proper **participation exemption**, (ii) an **interest box** / group financing regime and (iii) an IP / **licensing box**

Lump sum tax under pressure

- **Abolished in 5 out of 26 cantons:** Zurich (2009), Schaffhausen (2011), Appenzell-Ausserrhoden and Basel-Land (2012) as a result of a popular votes (referendum). Abolished by Parliament in Basel-City (2012).
- **Lump-sum reinforced in 6 cantons :** Berne, Lucerne, St Gall, Thurgau, Nidwalden and Glarus
- **Upcoming votes** in Zug, Geneva, Aargau and Obwalden (and not in Vaud)
- **New federal and cantonal laws** re lump sum taxation, **as per 2016 :**
 - increase minimum **from 5 to 7 times rental value** or annual rent ;
 - fix a **minimum** tax base of **CHF 400'000** for federal tax purposes and the cantons will also have to fix a minimum tax base ;
 - the lump sum tax treatment will also **include net wealth tax** ;
 - existing rulings respected for a **transitory period of five years**
- **Popular initiative against lump sum taxation:** vote expected in 2014/15

Gift and inheritance tax initiative

- People's initiative to introduce **federal** gift and inheritance tax
- Today **0% or low %** in direct line / btw spouses
- Proposal : **20% flat rate** in all cases (except spouses)
- Estates **as of 2M CHF** / gifts as of 20K CHF
<2% of taxpayers – too selective / discriminatory?
- **Retroactive** as of 2012
- Referendum to be held in **2014/2015**

Employee Participations

Taxation of employee share and stock option plans 2013

- Federal Law on the Taxation of Employee Participations approved by Parliament on December 17, 2010. Referendum delay expired on April 7, 2011. **Entry into force on January 1, 2013.**
- **Employee Participations** defined as shares, profit shares, participation rights, share quotas and any other participations granted by the employer, the parent company or any other group company to the employee + options to buy such Participations.
- General rule: **taxation upon grant** based on market value
- **Exceptions:** non-listed/restricted options taxable **upon exercise**
- Reduction for blocked participations: 6% per year and max 10 years

Stamp tax on the way out

Since April 1, 2012 : stamp issuance tax on debt instruments (bonds and the like) abolished

March 19, 2013 : Swiss Parliament proposes to abolish stamp duty on equity (currently 1%) as well

Next step WHT ?

Discussion (government, Parliament, practitioners) whether the interest and dividend WHT should transition into a paying agent system

Any questions ?

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